



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

JGlr.: 05-05

Paper No. ____

MARK A. LITMAN & ASSOCIATES, P.A.
YORK BUSINESS CENTER/SUITE 205
3209 WEST 76TH ST.
EDINA MN 55435

COPY MAILED

JUN 16 2005

OFFICE OF PETITIONS

In re Application of :
Snow :
Application No. 10/602,015 :
Filed: 23 June, 2003 :
Attorney Docket No.: PA0883.ap.US :

DECISION
ON PETITION

This is a decision on the petition under 37 C.F.R. §1.78(a)(3)—styled as a “Petition under 37 C.F.R. §1.54(c) . . .”—filed 20 August, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to a prior filed nonprovisional application (to wit: Application No. 08/695,640, filed 12 August, 1996). As will become evident, the petition is in conflict with itself, in that it also appears to seek priority to Application No. 08//388,292, filed 14 February, 1995, and Application No. 08//043,413, filed 6 April, 1993.

The petition is **DISMISSED**.

A review of the file record fails to disclose that a claim for the benefit of priority to the above-noted, prior-filed nonprovisional application(s) was made within the time period set forth in 37 C.F.R. §1.78(a)(2)(ii) and further failed to include a proper reference to the above-noted, prior-filed application(s) as required by 37 C.F.R. §1.78(a)(2)(i) and §1.78(a)(2)(iii).

The instant application was filed on 23 June, 2003. Therefore, since this application was filed after November 29, 2000, a petition under 37 C.F.R. §1.78(a)(3) is the appropriate avenue of relief to accept a late claim for the benefit of priority to a prior-filed nonprovisional application.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and

- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

A review of the petition at page 5 thereof indicates that Petitioner seeks to add references to Application No. 08/695,640, Application No. 08//388,292 and Application No. 08//043,413, while deleting the claim for priority to Application No. 08/198,368, filed February 18, 1994.

However, at page 3 of the petition, Petitioner states only that "the omission of the additional intervening application in the chain (USSN 08/605,640, [sic, 08/695,640] filed August 12, 1996) was unintentional." (Emphasis supplied.) Thus, Petitioner fails to make the statement of unintentional delay as to Application No. 08/388,292 and Application No. 08/043,413.

Further, in reviewing the chain of prior-filed applications , it is noted that Application No. 10/286,370, filed October 31, 2002, became abandoned on March 25, 2003, for failure to timely reply to the Notice mailed January 24, 2003. Therefore, as Application No. 10/286,370 became abandoned prior to the June 23, 2003 filing date of the instant application, the claim for priority thereto is improper as no copendency exists between this application and Application No. 10/286,370.

Therefore, as of this writing Petitioner has failed to satisfy the statement requirement of the regulation as to all applications for which late priority is claimed, and the petition hereby is **dismissed**.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: IFW Formal Filings
 (703) 872-9306
 ATTN.: Office of Petitions

By hand: Mail Stop: Petition
 Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Inquiries concerning this decision may be directed to John Gillon, Senior Attorney, Office of Petitions at (571) 272-3214.

A handwritten signature in cursive script, reading "Frances Hicks". The signature is written in black ink and is positioned above the printed name.

Frances Hicks
Petitions Examiner
Office of Petitions